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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/541,090 Confirmation No.:
Applicant(s): Temple, Kit
Filed: 12/18/2003
Art Unit:
Examiner:
Title: Distributing Content Data
Attorney Docket No.: 884A.0119.U1 (US)
Customer No.: 29,683

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

28 NOV 2006

Legal Staff
International Division

Renewed Petition Under 37 CFR §1.47(b)

Sir:

Applicant's attorney requests reconsideration of the petition under 37 CFR §1.47(b) in the above-identified patent application.

Enclosed is the following additional item to support this petition:

- Statement by person having firsthand knowledge of the facts that the invention was made by the employee while employed by the 37 C.F.R. 1.47(b) applicant.

The Decision On Petition Under 37 C.F.R. 1.47(b) mailed 18 September 2006 stated that the following two items were not satisfied:

- Item (2) - factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; and
- Item (5) - proof that the 37 C.F.R. 1.47(b) applicant has sufficient proprietary interest in the application.

In regard to item (2), the Attorney Advisor appears to believe that item (2) cannot be satisfied unless copies of returned mail receipts are submitted. This is incorrect. In this case there are no return mail receipts. In this case there is no evidence that the documents were returned as undeliverable. Please note that 409.03(d) states that copies of "cover letters of instructions" are sufficient evidence. Exhibit A and Exhibit B submitted in the Petition filed 14 April 2006 are copies of cover letters of instructions. Thus, contrary to what the Attorney Advisory has said, copies of sufficient documentary evidence has been submitted.

Also in regard to item (2), the Attorney Advisory stated that the declaration by James Seymour is entirely lacking in firsthand knowledge because each section (other than the paragraph setting out declarant's name) is prefaced with "based upon information and belief". However, merely because sections are prefaced with "based upon information and belief" does not mean it is hearsay, and does not mean it is not signed by a person having firsthand knowledge of the facts. The fact is that the declarant had to review his file and make statements based upon review of papers and documents in his file. **Please note that the letters in Exhibits A and B were Mr. Seymour's letters.** If the Attorney Advisor merely looked at the evidence, she would have seen this fact and should have realized that Mr. Seymour had first hand knowledge. In view

of the fact that the cover letters of instructions" in Exhibit A and Exhibit B were sent to the nonsigning inventor by Mr. Seymour, it is ridiculous to state that Mr. Seymour did not have first hand knowledge of the facts recited in the Statement. Mr. Seymour merely had to refresh his firsthand knowledge by reviewing his file. Thus, because Mr. Seymour's firsthand knowledge merely had to be refreshed by reviewing his file, it was totally appropriate for the Statement to recite "based upon information and belief..." The Attorney Advisor failure to give weight to the Statement is reversible error.

Please also note that the declaration in the Statement states:

"I hereby declare ... that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon."

This declaration in combination with the rest of the language in the Statement is sufficient to satisfy MPEP 409.03(d). For example, the Attorney Advisor had no problem with the Statement stating:

"Based upon information and belief, the last known address of the inventor is:

Kit Temple
Iris House, Pyrford Road

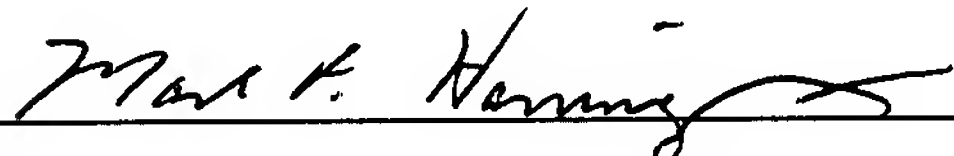
Woking, Surrey GU22 8UQ
United Kingdom"

The undersigned attorney has filed many statements having this language in other 37 C.F.R. 1.47(b) cases before without the USPTO ever objecting. There is no one more suited than Mr. Seymour to attest to the facts that a diligent effort has been made to find or reach the nonsigning inventor. Mr. Seymour clearly has first hand knowledge after reviewing his file and his letters sent to the nonsigning inventor. The Attorney Advisor is requested to reconsider her decision that Item (2) has not been satisfied.

In regard to Item (5), attached is another Statement by a person having firsthand knowledge of the facts that the invention was made by the employee while employed by the 37 C.F.R. 1.47(b) applicant. This Statement includes a copy of the nonsigning inventor's employment agreement.

In view of the above, the Attorney Advisor is requested to reconsider her decision that Item (5) has not been satisfied.

Respectfully submitted,


Mark F. Harrington (Reg. No. 31,686)

11/16/06
Date

Customer No.: 29683
Harrington & Smith, LLP
4 Research Drive
Shelton, CT 06484-6212
203-925-9400

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail on the date shown below in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

11-16-06
Date

Ann O'Brien-Towich
Name of Person Making Deposit



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Statement of Facts to Support
Petition Under 37 CFR §1.47(a)

Sir:

The undersigned hereby declares:

I, James Seymour, am a European Patent Attorney.

Attached as Exhibit A is a copy of an employment agreement signed by Kit Temple wherein Kit Temple agreed in writing to assign inventions to Nokia (UK) Ltd. Some details, such as salary, have been redacted. Page 7 of the agreement relates to inventions.

I declare that the invention described and claimed in U.S. patent application No. 10/541,090 was made by Kit Temple while employed by Nokia (UK) Ltd.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 16 NOV 2006

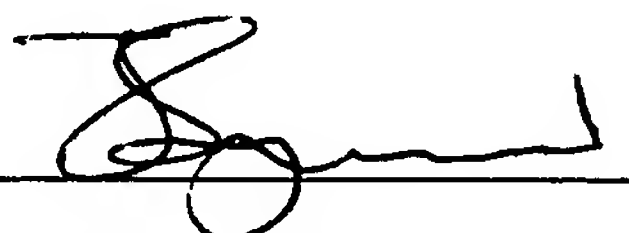
By: 
Name: James Seymour

Exhibit A

Our Ref: JAB/SW
13th July 2001

Mr Kit Temple

NOKIA UK LIMITED
Nokia House
Summit Avenue
Farnborough
Hampshire
GU14 0NG

Dear Mr Temple

Further to your recent interview, I am pleased to offer you the position of Product Insights Analyst reporting to
Head, Product Insights.

You will be based at Southwood, although you may be expected to work abroad on occasions. Your salary will be per annum, and the associated benefits detailed in the attached terms and conditions letter. You should note that this offer is subject to satisfactory references, if necessary being received before your start date. Please complete the enclosed medical questionnaire and return it as soon as possible. This will be forwarded to our Company Doctor for review.

A Nokia 6210 mobile phone will be provided free of charge, including a personal SIM card, free monthly line rental and a contribution towards call costs of £15 per month.

I also request that you supply evidence that you have the right to work and live in the United Kingdom; this can be in the form of either your birth certificate, your passport, a work permit, a letter from the Home Office confirming your status, or residence permit if you are an EEAA citizen, a certificate of registration or naturalisation or any document issued by a previous employer or a government agency with your National Insurance number noted on it. You may be aware that prospective employers are now legally required to have sight of this evidence when recruiting employees, hence this request. The document will be photocopied and returned to you.

We look forward to you contacting us as soon as possible to arrange a convenient start date. On your first morning please report to reception at Nokia House, Southwood at 9.30am and ask for

Cont.....

Within Nokia we run a Performance Management and Personnel Development process called Investing in People. Your Manager will explain how this works, and will initiate the process with you within a month of your start date.

During the first 3 months your employment may be terminated by the provision of 1 weeks notice given by either party at any time. Thereafter you will be required to give the organisation 1 calendar months notice of your intention to terminate your employment. Except in cases warranting summary dismissal the company will give you 1 calendar months written notice of its intention to terminate your employment.

Although it is covered in the Employee Handbook, I would confirm that it is a strict condition of employment that you refrain from smoking on Company premises, at all times.

In the meantime please read all the enclosed documentation and return the Application Form, one copy of the Terms and Conditions letter, the Confidentiality Agreement and the Data Protection Act 1998 Form. If you have any queries or would like further information, please do not hesitate to contact me.

May I take this opportunity to welcome you to Nokia UK Ltd, where I hope you will enjoy a successful career.

Yours sincerely,

ESTABLISHED POSITION - TERMS AND CONDITIONS LETTER

Mr Kit Temple

This statement sets out, or refers to other documents which detail the terms and conditions of employment under which **Nokia UK** hereafter referred to as "the organisation", is employing you in accordance with the Employment Rights Act 1996.

Commencement of Employment

Your employment with the organisation will commence on a date to be agreed.

Job Title/Duties

Product Insights Analyst. This title does not define or limit the scope of your employment with the organisation which might reasonably require you to perform other duties from time to time.

Your job grade is

Remuneration

Your salary will be paid at the rate of £ per annum. Salaries are paid monthly in arrears by credit transfer at the rate of 1/12th of the annual salary. Payment will be made not later than the 20th day of each month. If you leave the organisation towards the end of a month, after payroll has been processed, you will owe the organisation any overpayment of salary for the days not worked.

You agree and acknowledge that the organisation may deduct, from time to time and in any event on termination of your employment, howsoever arising, from such remuneration any sum owed to it by you.

It is essential that you open and maintain a personal bank account or suitable building society account and provide the organisation with the necessary details to enable direct payments to be made. A form is enclosed for this purpose, so that you can complete and return it as soon as possible.

Salaries are normally reviewed in April of each year. Your next review date will be January 2002.

Location

R.T.

At Southwood House

Your initial place of work will be Southwood. However the company reserves the right to transfer you between sites as is necessary to meet business needs. For moves which are of a greater distance, relocation or temporary travelling expenses will be considered. Your job may also involve regular/occasional travel for the proper performance of your job.

Hours of Work

You will be employed in an area where flexitime operates according to the following conditions:

- You will be required to record your working time.
- The earliest time you may begin work is 7.30 a.m.
- The latest time you may finish work is 7.00 p.m.
- All staff must be present between 9.30 a.m. and 4.00 p.m.
- Lunch breaks will be taken every day and last for at least 30 minutes, up to a maximum of 120 minutes.
- You will be required to work at least 150 hours every accounting period, which lasts for 4 weeks.
- The maximum number of hours above target which may be carried forward is 7.5.

Holiday Entitlement

The organisation's holiday year runs from 1st January to 31st December. Holidays must be taken by the year-end or be forfeited. You are entitled to 8 public holidays which are recognised by the organisation, or assigned days in lieu, paid at your normal average earnings (excluding any commission or bonus). Other holidays are taken by agreement with your immediate manager, who will take into account the needs of the organisation.

These details are based on a working week of 5 days. If you change to a different arrangement of working hours, your holiday entitlement is adjusted pro rata to the number of days in the week.

Staff in service on 1st January will be entitled to 25 days holiday per year. Flexible working hours will give the option of accruing sufficient hours to take up to an additional one day per month.

The method for calculating how many days holiday entitlement accrues during a part year is:

1st Jan – 31 st Jan	25 days	1st July - 31st July	13 days
1st Feb – 28 th Feb	23 days	1st Aug - 31st Aug	11 days
1 st Mar – 31 st Mar	21 days	1st Sept – 30 th Sept	9 days
1st April – 30 th Apr	19 days	1st Oct – 31 st Oct	7 days
1st May – 31 st May	17 days	1st Nov – 30 th Nov	5 days
1st June – 30 th June	15 days	1st Dec - 31st Dec	3 days

On termination of employment, the entitlement to accrued holiday pay is based on the above formula, less any holiday days already taken.

Absence Reporting Procedures, Maternity Leave and Sick Pay

If you are absent from work for any reason you must telephone your immediate manager/supervisor within the first hour of the working day when you should been at work. If this person is unavailable you must notify a member of the Human Resources department.

If you are absent due to sickness for more than seven calendar days you will be required to produce a doctor's certificate with respect to such sickness.

No salary is paid for unauthorised absence from work. Provided you satisfy the conditions concerning eligibility to Statutory Sick Pay and have complied with the procedure referred to above, you will be entitled to Sick Pay for absences due to either sickness or injury, (Sick Pay includes Statutory Sick Pay and the organisation's Sick Pay), as follows :

Years of service*	Full Basic Salary
Up to 8 weeks	—
Over 8 weeks to 1 year	6 weeks
Over 1 year but less than 5 years	12 weeks
Over 5 years but less than 10 years	20 weeks
10 years and over	26 weeks

*For the purpose of establishing your entitlement, service is defined as continuous within the organisation or other associated companies and is calculated on the first day of absence.

If, on joining the organisation, you are in possession of either a leaver's statement SSP (1) or a Form BF220 from your local DSS office it must be given to the Human Resources department at the earliest opportunity.

Details of the provisions available for maternity leave and/or maternity pay are contained within the company Policy Manual available within your department.

Code of Conduct, Disciplinary and Grievance Procedures

The organisations Code of Conduct is attached. Complete details of the Disciplinary and Grievance Procedures (including the Appeals procedure) are contained within the organisation's Policy Manual available in your department.

If you are dissatisfied with any disciplinary decision made against you or if you have any grievance relating to your employment with the organisation, you should in the first instance complain in writing to your line manager/supervisor detailing the complaint or the grievance and requesting a meeting with that individual to discuss the matter further. Should the matter not be resolved, you should refer to the manager to whom your manager/supervisor directly reports.

Health and Safety

Under the Health and Safety at Work Act (1974) responsibility for health and safety extends to individual members of staff, both for their own safety and that of their colleagues and visitors. Any accidents or near misses must be reported to the Facilities Department for recording in the Accident or the Incident Book immediately. You must familiarise yourself with the organisation's policy on health and safety.

Complete details are contained in the organisation Policy Manual which is available in your department. You must also read and ensure that you understand the Fire Procedure for your department.

The organisation operates a No Smoking Policy which all employees are required to comply with.

Pension Scheme and Life Assurance

A detailed summary of the Pension and Life Assurance Scheme is contained in the Nokia Pensions booklet. Further details are available for Human Resources.

You will automatically be entered into membership of the Nokia Group (UK) Pension and Life Assurance Scheme as from the date of joining, although you do have the right to opt out by giving written notice to that effect to the Payroll Department. Deductions will be made from your salary at the rate specified from time to time and notified to you by the Trustees. You will be contracted out of the State Earnings Related Pension Scheme (SERPS).

Private Health

The company will provide you at its' discretion with a private health care facility for you, your partner and any children under the age of 21 years or 25 years if they continue in full time education. Eligibility to join the scheme is within the first three months of commencement of employment. Details are available from Human Resources.

Long Term Income replacement

The company will provide you at its' discretion with Long Term Income replacement insurance providing up to 75% of pre-disability salary. This benefit is subject to insurers terms and conditions. Details are available from Human Resources.

Insurance/Pension – General

The organisation reserves the right to terminate its participation in any Pension or Insurance Scheme or to substitute another scheme or alter the benefits available under any such Scheme. In the event of the reduction or discontinuance of any pension or insurance scheme benefit referred to above, the organisation shall be under no obligation to replace the same with identical or similar such benefits.

Confidential Information

You may not, during your employment with the organisation or at any time thereafter, without written permission of the organisation, disclose to any person outside the organisation, or to any person within the organisation other than a person whose province it is to know the same, any information which is of a confidential nature or disclosure of which may damage the interests of the organisation, such confidential information to include, but without limitation, trade secrets, methods of doing business and customer and supplier lists. On the termination of your employment, you will deliver to the organisation any documents or other media relating to the business of the organisation. Full details are contained within the Business Conduct Policy enclosed.

Non Competition

After leaving our employment you will not directly or indirectly be engaged concerned or interested as an employee or in any other capacity in competition with the business of the organisation. Neither will you seek to entice from us any person who was a customer or an employee of ours at the date of termination of your employment.

These restrictions shall apply to you in your personal capacity and as an employee or agent for any third party and such restrictions shall continue for a period of six months following the date of termination

In agreeing to these restrictions you acknowledge that they serve the purpose of protecting the legitimate business and commercial interests of the organisation and that they are not unduly severe.

Retirement Date

Your normal retirement date is on the last day of the month in which you reach the age of 65.

Collective & Workforce Agreements

Your terms and conditions are not covered by collective agreements.

Notice Periods

You will be required to give the organisation 1 calendar months written notice of your intention to terminate your employment. Except in cases warranting summary dismissal, the organisation will give you 1 months written notice (until you have served five years continuous service. Thereafter it will increase its notice by one week for every year of service to a maximum of 12 weeks, after 12 years service,) of its intention to terminate your employment.

The organisation expressly reserves the right to terminate your employment without notice if it has grounds to believe that you have committed any material breach of these terms and conditions or any gross misconduct or act of gross incompetence, any such action under this paragraph being without prejudice to any other of the organisation's rights.

If notice of termination of your employment is given to you the organisation may require you to perform only such duties as it may specifically allocate to you, or no duties at all and may exclude you from any premises of the organisation during any period of your notice or part of it, provided that your salary and contractual benefits shall remain payable in full during this period (unless and until your employment is terminated). During your notice period you will remain an employee of the Company and, as such, you will not be entitled to work for any other organisation whether or not for remuneration.

Upon termination of your employment, you will return all organisation property forthwith, including any credit cards, equipment, the organisation car, any correspondence and any other material in whatever form in your possession which belongs to or relates to the business of the organisation.

Copyright Inventions and Patents

You shall promptly disclose to the organisation all copyright works, designs and inventions originated, conceived, written or made by you alone or with others in the course of your employment ("intellectual property") which shall belong to and be the absolute property of the organisation.

The organisation shall be entitled to make such additions, deletions, alterations or adaptations to or from any as it shall in its absolute discretion determine.

You hereby assign to the organisation by way of future assignments all copyright design rights (whether registered or unregistered) and any proprietary rights ("intellectual property rights") for the full term thereof throughout the world in respect of all intellectual property and you hereby irrevocably and unconditionally waive in favour of the organisation any and all moral rights that you may have in such property.

You shall at the request and expense of the organisation do all things necessary or desirable to substantiate the intellectual property rights and vest these in the organisation absolutely.]

Return of Company Property

You are required, on the last day of your employment with the organisation, to return to your manager or the Human Resources department all or any organisation property which may be in your possession

You acknowledge that failure to do so could entitle the organisation to withhold payment of your final salary and/or any other monies payable to you or to deduct an amount equivalent to the cost of such property from such monies. You will be required to sign a separate statement to this effect, on delivery of any organisation property to you during the course of your employment.

Working Abroad

If you work abroad for a temporary period as part of your employment with the organisation your terms and conditions of employment will remain unaltered. For longer term assignments overseas, the terms of the International Assignments policy will apply.

Other Terms

This statement sets out the main terms and conditions upon which you are employed. They are in accordance with and subject to the terms of:

The Pension Scheme	Private Health Insurance
The Rules of the Sick Pay Scheme	Private Health Care
The organisation's Code of Conduct	Life Insurance Scheme
The organisation Policy Manual	

The documents referred to above are available for your inspection in the Human Resources department or from your manager. Any change in the terms of your employment will be duly recorded within 4 weeks of the date of the change.

AUTHORISATION


Signed on behalf of the organisation: _____

Position: _____

Date: 13/7/01

ACCEPTANCE

I acknowledge receipt of a copy of this written statement, and agree that the terms set out in it are fully understood, correct and agreed.

Signed: 

Date: 16/7/01

Print name: KIT TEMPLE